

TO: STANDING COMMITTEE ON PLANNING AND ZONING (SC P&Z)
CC: Framingham Town Clerk, Valerie Mulvey
Planning Board Director, Jay Grande
From: Hank Moran, SC P&Z Clerk
Date: November 29, 2005
Subject: Minutes of the October 17, 2005 Meeting of the SC P&Z

Note: These minutes are an update to the draft copy I had provided in October to most Committee members in order that the information be made available for their consideration for the October 26 Town Meeting. Unfortunately I was unable to get a copy to all P&Z members before that meeting. However, since this present document corrects errors I discovered in the earlier draft, please disregard that draft and consider this copy as the formal submission of these minutes. Thanks. HM

Attendance

With a quorum present, Ned Price, SC P&Z Vice Chair, called the meeting to order at 7:13 PM. The following Committee members were present during part of or the entire meeting.

| Precinct | 2005-2006 Member |
|-----------------|------------------------------|
| 2 | Steve Shull |
| 3 | Harold J. Moran, Clerk |
| 6 | Edward Levay |
| 7 | Todd Robecki |
| 10 | Esther Hopkins |
| 11 | Ted Cosgrove |
| 12 | Betty Muto |
| 13 | Gerald Couto |
| 14 | Judy Callahan |
| 17 | Martin Ned Price, Vice Chair |

1. Announcement Regarding HR 3140

Ned Price, SC P&Z Vice Chair, urged Committee members to contact our State Representatives, State Senator, and others on the Joint Committee on Municipalities and Regional Government to vote favorably on H3140. Ned had sent such a message to the Joint Committee members on September 22. A copy of Ned's message is attached to these minutes. SC P&Z, at our September 12 meeting, had approved the following related motion by a vote of 9 in favor, 2 opposed, and 0 abstentions: "That the Chair, representing the SC P&Z, send a letter to our two State Representatives and our State Senator urging them to make their best efforts to pass house bill H3140, which is based on a local home rule petition passed at Town Meeting and supported by the SC P&Z."

2. Minutes of September 12, 2005 SC P&Z Meeting

The minutes of the September 12, 2005 SC P&Z meeting were approved (with one typo correction) by a vote of 6 in favor, 0 opposed, and 1 abstention.

3. Article 8 of the October 26, 2005 Town Meeting Warrant

Background: At the September 12 SC P&Z meeting there was considerable discussion regarding the Housing Policy Liaison Committee and the related Housing Policy Citizens' Advisory Committee. The result of that earlier session (see those minutes for details) was the following motion, supported by a unanimous 11-0-0 vote: "Tom O'Neill will ask the Board of Selectmen to request that the Steering Committee of the Housing Policy Liaison Committee give a report at the October Town Meeting on their progress to date, objectives, and a list of milestones over the coming months." Tom followed up on this

motion by sending a letter to and then addressing the BoS. He was advised by them and the Town Manager to submit an Article to the same effect for inclusion on the warrant of the October Town Meeting. Since such an Article also had been proposed (though not voted on) at our September 12 meeting, Tom then submitted the Article for consideration by the BoS. The Article was approved for inclusion on the warrant for the October 26 Town Meeting.

There was some discussion on whether the Committee needed to consider a formal motion to submit this Article since we had not done so. Not all agreed that this was necessary, but that it would be appropriate for the Committee to take a formal vote on supporting the Article as submitted.

Steve Shull offered the following motion, seconded by Ted Cosgrove: **That the SC P&Z submit an Article [following is the text of Article 8]: “To see if the Town will hear a report of the Housing Policy Steering Committee and/or their designee. It is requested that the report include the progress to date and a list of objectives or goals for completion of the report. Pass any vote or taken any action relative thereto. Sponsor: Standing Committee on Planning & Zoning.” The vote on this motion was 8 in favor, 1 opposed, 0 abstentions.**

Steve Shull then offered the following motion, seconded by Ted Cosgrove: **“That the SC P&Z support Article 8 as stated in the Warrant for the October 26, 2006 Town Meeting.” The vote on this motion was 9 in favor, 0 opposed, 1 abstention.**

4. Article 5 of the October 26, 2005 Town Meeting Warrant

Robert Snider of Precinct 11, sponsor of Article 5 of the October 26 Town Meeting, presented information and invited feedback from the Committee on this Article (see the Warrant for the complete Article). Basically the Article asks TM to approve monies “to be expended at the discretion of the BoS” to “compensate Town Counsel, and Special Counsel as needed ... to represent the Town as to all legal claims that may be brought against the Town ... arising from all manner of claims including; without limitation, claims brought relative to the Zoning By-Law, Massachusetts G.L. Chapter 40A, and any other law relative to land use.”

Part of the background for this amendment is concern that the South Middlesex Opportunity Council (SMOC) has indicated that it may go to Federal Court as an action to protect its right to obtain certain properties (notably one on Winter Street), supported by the provisions of the State’s Dover Amendment, with the claim that the Town’s recent actions to challenge such purchases could be regarded as discriminatory against social service agencies such as SMOC. The Town’s site-plan review requirement, they claim, has the effect of discriminating against “handicapped people.” The concern is that an agency with a \$50,000,000 operation, with \$4,000,000 of free cash available to support its litigation, can simply out spend the Town to win its case, should it move forward. The Article proposes to provide a means for the Town proactively to set aside certain monies that can be used for related legal actions, and further to provide a mechanism for the BoS and Town Counsel to consider the matter under the protection of attorney privilege.

Mr. Snider had met with Ways and Means regarding this Article, and has plans to meet also with the Finance Committee and the Board of Selectmen seeking their input and support prior to presenting the Article at TM. He also stated that he has received feedback on some provisions of the Article and was considering making some amendments to the wording, which would be brought forward at TM.

There was much discussion regarding this Article. Following are some of the points raised:

- Steve Shull was concerned that the Article did not mention a specific amount of funds, adding that he was not comfortable with an Article that did not have a specific amount of monies attached. He also questioned setting up a special account for a special case, such as this one with SMOC. He said that he could support a resolution on this matter, but felt that an Article was not appropriate and he would not support it as an Article.
- Ted Cosgrove spoke about the importance of this issue to his Winter Street neighbors and felt that the Article is needed and should be supported.

- Esther Hopkins raised two concerns: (a) if a certain amount of spending is designated and approved, the opponents know how much you can spend, which puts you at a disadvantage, but also (b) if the amount of approved funds is open-ended, beginning with a relatively small amount and then adding to it as the case goes forward, you can move well beyond the resources originally intended or available. If instead a certain amount is provided in the Town Budget, you can add to the budget by request as required by the circumstance. Esther noted that the Finance Committee and BoS have a litigation committee to advise them. Also, if the BoS asks Town Counsel to do this and more money is needed, the BoS will come to TM if they need more money in the budget.
- Ned Price noted that the wording of the Article provides a scope that is more general than Chapter 40A (“... all manner of claims ... without limitation”) and does not mention SMOC specifically. Mr. Snider responded that it was drafted that way because he did not want to make it too narrow.
- Betty Muto noted that people in the Town want to know why and what we are getting into based on facts, and raised concern that the Town leaders have not given sufficient attention to factual information in their decisions.
- Mr. Snider noted that he has received feedback from some sources that if the Article is open-ended regarding monies as it now reads, it will not receive support.
- Ned Price noted that the recent change to the By-Law was made so that it would be in accordance with what other towns and municipalities have done.
- There was some general discussion about the possible tie-in of this Article with the PILOT (payment in lieu of taxes) study. Esther questioned that we have any leverage to get SMOC to pay in lieu of taxes.
- Ted Cosgrove noted that he (and his neighborhood) knew nothing about the SMOC Winter Street acquisition until he read about it in the paper, which is surprising given his extensive involvement in Town activities as a member of two standing committees, as precinct chair, and other activities. He said that SMOC's actions are the antithesis of what a potential “good neighbor” should do. He felt strongly that the Article makes an important statement that people in the neighborhood and in the Town care and are willing to put their resources behind what is right to do. The Town needs to say that we are not pleased with the way things are going and are prepared to fight for what is right. He charged further that SMOC has completely avoided any kind of reasonable dialogue with Town officials or its citizenry as they move forward with their plans, and that this Article at a minimum makes a public statement that the people of the Town are prepared to support Town leaders as they address this issue.
- Judy Callahan stated that it is important that TM and the BoS are consistent in approach, and she believed that the BoS is on the same page as TM on this matter. She also commented on the arrogance of SMOC in its approach, and noted that they have a vested interest in maintaining the status quo, in doing business as usual. Recent efforts by the Town have challenged that status quo.
- Mr. Snider noted that the Attorney General has not approved the recent Town action to require site plan review, and thinks that SMOC is waiting to file their law suit until that action has been taken. He also expressed appreciation for the input from the Committee and restated that he was open to making amendments to the original Article based on this input and that of others.

Hank Moran offered a motion, seconded by Ted Cosgrove, that the Committee support the article as submitted in the TM warrant. The vote was 5 in favor, 4 opposed, 1 abstention.

Following this vote there was further discussion, with some members indicating that if some of the wording of the Article were changed, they would have voted differently. Possible changes to the wording were discussed. Concerns were raised that the wording “all manner of claims including *without limitation*” was too general and that this Article should be restricted to the Zoning By-Law. Based on this discussion, **Judy Callahan moved that the Committee support the article as written but with the following words deleted from the second paragraph of the Article: “including; without limitation, claims brought”. The vote was 9 in favor, 1 opposed, 0 abstentions.**

Mr. Snider said he would consider this amendment when submitting the Article to TM.

5. Article 3 of the October 26, 2005 Town Meeting Warrant

David Marks, member of the Framingham Historical Commission, sponsor of Article 5 of the October 26 Town Meeting, presented information and invited feedback from the Committee on this Article (see the Warrant for the complete Article). The Article asks TM to amend the following section of the Town By-Law: Article 5, Section 21, Demolition Delay Bylaw for Historically or Architecturally Significant Buildings in the Town of Framingham, MA. Mr. Marks presented copies of the article with the proposed amendments highlighted and provided rationale for the proposed changes. This rationale is also summarized in the Background Materials provided to TM members with the Warrant.

A key change is to extend the delay for demolition permits from 6 months to 12 months for certain designated properties, namely for “any building on the Cultural Resources Inventory that the Commission has determined should be preferentially preserved.” This Inventory includes 681 properties that the Commission has identified as requiring this special protection.

Another change is to add the Jonathan Maynard Historic District, which had not been established by TM when the original Demolition By-Law was put into effect, to be protected and preserved.

Esther recommended that the sponsors explain what the Cultural Resources Inventory list is when presenting the Article at TM.

Gerry Cuoto and Todd Robecki, both members of the Historical Commission, encouraged P&Z support of the Article.

Hank Moran moved, seconded by Betty Muto, that the SC P&Z support Article 3 of the October 25 TM warrant as written. The vote was 10 in favor, 0 opposed, 0 abstentions.

6. Article 10 of the October 26, 2005 Town Meeting Warrant

Article 10, sponsored by the BoS, proposes that TM “hear a report from the Building Commissioner on the extent of building use and sign violations in the Town of Framingham, and a recommended plan of action to address same.”

A question was raised whether it was appropriate for the Committee take a vote on support of this Article. The committee agreed it was. **Steve Shull moved, seconded by Judy Callahan, that the Committee support Article 10 as written in the Warrant for the October 16, 2005 TM. The votes was 10 in favor, 0 opposed, 0 abstentions.**

7. Discussion of “Municipal Trust”

The minutes of the September 12 meeting of the SC P&Z included the following action: “A recommendation was made and accepted that the Chair will ask the Town Clerk, Valerie Mulvey, to provide to SC P&Z a copy of the original and revised EDIC charters for Committee review.” In addition, the minutes indicated that Jay Grande would forward to the Committee a copy of the enabling legislation for the Municipal Housing Trust. These actions were based on the considerable discussion of the Municipal Trust as described in the minutes of that meeting.

However, these documents have not yet been received by SC P&Z for its consideration. Accordingly, **Steve Shull offered the following motion (the clerk unfortunately did not record who seconded this motion): That the Committee table any further discussion of the Municipal Trust to an indefinite date, and that the Chair follow up on obtaining these documents. The vote was 10 in favor, 0 opposed, 0 abstentions.**

8. Meeting with the Director of the Department of Planning and Development

At its September 12, 2005 meeting the SC P&Z had also voted 9-2-0 for the following motion: “That the SC P&Z Chair invite Kathy Bartolini, Director of the Department of Planning and Economic Development

to come to a meeting of the SC P&Z to explain how she views her role as negotiator of housing proposals for the Town of Framingham.” No date had been set for this meeting.

In discussion Committee members raised concerns about the role of the Senior Planner for the Planning Department, and whether the Planning Department should be in a position to present its opinions to the Zoning Board of Appeals (ZBA) on particular cases that come before it since the ZBA comes under the direction of the Planning Department. Hank Moran noted that at a recent ZBA hearing the Senior Planner, Gene Kennedy, had presented a detailed position on the application of D&D Mulch and Landscape for a Special Permit to build a concrete batch plant to be operated by Boston Sand and Gravel at 597 Old Connecticut Path. There was no ZBA objection to this submission. Hank said that he saw no reason not to allow this kind of useful input since it was based on thorough, factual, and informative research.

Steve Shull moved, seconded by Ed Levay, that the Chair put on the P&Z agenda for a future month a discussion of the relationship between the Planning Department and the ZBA, and inform the Chairs of both the Planning Department and the ZBA that this item will be discussed at a P&Z meeting. The vote was 10 in favor, 0 opposed, 0 abstentions.

9. New Business: SC P&Z Representation on the Advisory Committee for the Route 126/135 Intersection

Concern was raised that the SC P&Z does not have a representative appointed to participate on the Advisory Committee for the Route 126/135 intersection, despite efforts by the Chair, Tom O’Neil, to obtain a slot on that Committee. Hank Moran provided a copy of a letter that Tom had sent to Katie Murphy, Chair of the BoS, requesting such an appointment, which to date had not been given.

SC P&Z members expressed the view that it was important to have such a representative on this Advisory Committee, and that Tom should be its representative. **Accordingly, Betty Muto offered, and Judy Callahan seconded, the following motion: That Tom O’Neill, SC P&Z Chair, be appointed to the Route 126/135 Advisory Committee as the representative of the Standing Committee on Planning and Zoning, and that Ned Price as Acting Chair deliver that message to Katie Murphy via email on the following day.** *Clerk’s note: This was done.*

10. New Business: Special Permit for Concrete Batch Plant at 597 Old Connecticut Path

Hank Moran provided a document prepared by the Oaks Neighborhood Association (ONA), of which he is a member, that presents Comments and Points in opposition to the Concrete Batch Plant proposed for 597 Old Connecticut Path, as noted above in these minutes. The applicant requires a Special Permit from the ZBA, as well as other approvals from the Conservation Commission since the parcel involves wetlands and protected areas, and also from NSTAR, which has an easement on part of the parcel.

The Comments and Points address each of the five conditions of the By-Law, all of which must be met to obtain ZBA approval. The position of the ONA and others is that the ZBA should deny the special permit because several of the conditions of the Zoning By-Law have not been met and cannot be met. The ZBA has held three public hearings on this application, and the chorus of those opposed has grown, including business abutters, neighbors, and others. Hank urged members to review the points raised and support this denial of the permit, but did not propose a specific action for the Committee to take. *(Clerk’s note: At the time Hank was uncertain about the exact date of the next ZBA public hearing, but he has since informed Committee members by mail that the hearing will occur on November 8, and encouraged members of the SC P&Z who can be present to show their opposition. Any written statements regarding the proposed plant must be received by the ZBA by Tuesday October 25, to enable the ZBA and the applicant time to review these statements prior to the November 8 meeting, which is likely to be the final ZBA public meeting on this matter.)*

11. Adjournment

Somewhere around 10:00 PM a motion to adjourn was made, seconded, and passed unanimously.